



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mictronics, Inc.

File: B-234034

Date: May 3, 1989

DIGEST

1. Protest alleging that a solicitation amendment disclosed proprietary information beneficial to other offerors is untimely when not filed prior to the next closing date for the receipt of proposals.
2. Where a protester's best and final offer does not provide unit prices for the quantities required by the solicitation but instead proposes prices based upon different quantities, it is reasonable for the procuring agency to calculate the cost of the proposal on the basis of the price of the lowest quantity ordered based on past experience.
3. Protest alleging bias must present virtually irrefutable proof, since procurement contracting officials are presumed to act in good faith.

DECISION

Mictronics, Inc., protests the award of a contract to Instrument Control Services (ICS) under request for proposals No. N00612-88-R-0387, issued by the Naval Supply Center, Charleston, South Carolina (NSC), for shipboard patch panels. Mictronics alleges that the Navy: (1) disclosed proprietary information contained in the protester's proposal without proper authorization; (2) misapplied evaluation criteria in rating the protester's final pricing proposal; and (3) was biased against the protester which adversely affected its competitive position.

We dismiss the protest in part and deny it in part.

The NSC's solicitation for a 3-year, fixed-price requirements contract had a closing date for receipt of initial proposals of July 8, 1988. The solicitation instructed offerors to specify unit prices for every subline item designated in the solicitation. The solicitation advised also that a single award would be made to that offeror with

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the lowest acceptable total price, but there was no provision for minimum quantities. The Navy awarded the contract to ICS on December 22, 1988.

Mictronics argues that the Naval Electronics Systems Engineering Command, Charleston, South Carolina (Navalex), which worked with NSC in connection with this requirement, is biased against the protester and compromised certain of Mictronics' proprietary data.

First, Mictronics contends that its best and final offer (BAFO) price submitted in response to amendment 0003 was leaked by Navalex to other offerors. However, NSC has stated that no price proposals were forwarded to Navalex and only one offeror's parts list was forwarded for technical evaluation. Mictronics' allegation concerning the price leak is based on its belief without any support. Therefore, we find no merit to this contention.

Also, Mictronics contends that it knew of an acceptable part for the patch panels, not known to other offerors, which it submitted to NSC following a request in amendment 0003 for a parts list and this part number was revealed to all offerors in NSC's issuance of amendment 0004 which listed the part as acceptable.

Section 21.2(b)(1) of our Bid Protest Regulations requires that a protest alleging an impropriety in an amendment be filed prior to the next closing date for the receipt of proposals. 4 C.F.R. § 21.2(b)(1) (1988); Mictronics, Inc., B-228404, Feb. 23, 1988, 88-1 CPD ¶ 185. Since Mictronics knew of the basis for this allegation from amendment 0004, but did not protest prior to the next closing date, this allegation is untimely and not for consideration.

Regarding Mictronics' general claim of bias throughout the procurement process, Mictronics presents no evidence to support its bare assertion of bias. We will not attribute prejudicial motives to contracting officials on the basis of inference or supposition; any contention that the government acted with prejudice in excluding a protester from a contract award must be supported by virtually irrefutable proof that agency procurement officers had specific and malicious intent to harm the protester, since they are presumed to act in good faith. Mictronics, Inc., B-228404, supra.

Mictronics also contends that its price was low, but NSC improperly evaluated its last BAFO. The RFP's bid schedule listed the various items with estimated quantities and a blank for unit prices. The protester's initial proposal as

well as its first BAFO utilized this form. However, Mictronics' final BAFO broke down the estimated quantities for each item into incremental quantities of 1 to 5 units, 6 to 14 units, 15 to 29 units and 30 or more units. The greater the quantity ordered, the lower the offered price was. The protester's pricing proposal was reviewed by the contracting officer and it was determined it would be low only if all the estimated quantities of the items were ordered at the same time to obtain the greatest discount. Since there were no minimum quantities and the agency did not know when or in what quantities orders would be placed, the NSC evaluated Mictronics' proposal at the price offered for 1 to 5 units which resulted in a ranking of third lowest in cost.

We find the NSC's evaluation to have been proper. While Mictronics argues that its proposal would result in the lowest cost to the government, as noted above, this occurs only if the agency orders all estimated quantities in the same purchase order. The evidence submitted by Mictronics to support its protest, purchase orders issued under the prior contract, shows that this was not the way orders were issued. Under the previous purchase orders, quantities of 1 unit, 4 units, and 14 units were ordered over a period of 47 days. This supports the NSC's position that even if all the estimated quantities are ordered during the course of the contract, they are not ordered at one time to qualify for the quantity discounts. Therefore, Mictronics' allegation of offering the lowest cost is without merit.

The protest is dismissed in part and denied in part.


for
James F. Hinchman
General Counsel